

MF 02-10

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

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|---------------------------|---|----------------------------|
| THE DEPARTMENT OF REVENUE |) | |
| OF THE STATE OF ILLINOIS |) | |
| |) | Docket No. 02-ST-0000 |
| v. |) | |
| |) | |
| ABC EXCAVATING, INC. |) | Claim for Credit or Refund |
| |) | |
| Taxpayer |) | |

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe as a representative of ABC Excavating, Inc.

Synopsis:

The Department of Revenue (“Department”) issued a letter denying a claim for a motor fuel tax refund filed by ABC Excavating, Inc. (“taxpayer”). The claim requested a refund of taxes paid on undyed diesel fuel used for off-highway purposes for the period of January 2001 to November 2001. The taxpayer timely protested the Department’s denial of the claim. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer’s equipment is the type of equipment for which the claim for refund should be allowed. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a claim for a refund of tax paid on undyed diesel fuel for the period of January 2001 to November 2001. (Dept. Ex. #3)
2. The taxpayer's claim indicates that the undyed diesel fuel was used in excavators, a crawler loader, and a truck. (Dept. Ex. #3)
3. On March 21, 2002, the Department issued a letter to the taxpayer that denied the taxpayer's claim on the basis that the equipment that the fuel was used in does not qualify for the exemption. A copy of the letter was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), provides in relevant part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. ***

For claims based upon taxes paid on or after January 1, 2000, a claim based upon the use of undyed diesel fuel shall not be allowed except * * * for claims for the following: * * *

- (1) Undyed diesel fuel used (i) in a manufacturing process * * * or (ii) for testing machinery and equipment in a manufacturing process * * *.
- (2) Undyed diesel fuel used by a manufacturer on private property in the research and development * * * of machinery or equipment intended for manufacture.
- (3) Undyed diesel fuel used by a single unit self-propelled agricultural fertilizer implement, designed for on and off road use, equipped with flotation tires and specially adapted for the application of plant food materials or agricultural chemicals.
- (4) Undyed diesel fuel used by a commercial motor vehicle for any purpose other than operating the commercial motor vehicle upon the public highways. Claims shall be limited to commercial motor vehicles that are operated for

- both highway purposes and any purposes other than operating such vehicles upon the public highways.
- (5) Undyed diesel fuel used by a unit of local government in its operation of an airport if the undyed diesel fuel is used directly in airport operations on airport property.
 - (6) Undyed diesel fuel used by refrigeration units that are permanently mounted to a semitrailer, * * * wherein the refrigeration units have a fuel supply system dedicated solely for the operation of the refrigeration units.
 - (7) Undyed diesel fuel used by power take-off equipment * * *.” (35 ILCS 505/13)

Although the taxpayer indicated on its claim form that its use of the undyed diesel fuel does not fall within the seven exceptions listed above (Dept. Ex. #3, p. 4), the taxpayer contends that it is entitled to the refund. The taxpayer has been filing a claim for taxes paid on fuel used in this type of equipment for approximately 20 years and argues that it was not notified of the change in the Act that now limits these claims. The taxpayer contends that it should have been notified of the change. The taxpayer also argues that the Department has breached an implied contract that it had with the taxpayer to allow these claims. Finally, the taxpayer contends that it is rightfully entitled to the money because the taxes are not owed when the fuel is used off-highway.

Nothing in the statute or regulations requires the Department to provide notice to the taxpayer concerning changes in the statute. The fact that the taxpayer received a refund of the tax in the past does not create an implied contract between the Department and the taxpayer. For taxes paid before January 1, 2000, the statute allowed the refund, and then the law was changed. Although the taxpayer's equipment was used off-highway, the statute now limits claims based upon the use of the undyed diesel fuel. The taxpayer's equipment does not fall within the exceptions listed in the statute. The taxpayer's claim must therefore be denied.

Linda Olivero
Administrative Law Judge

Enter: September 19, 2002